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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,048	02/02/2005	Siegfried Ebenhoch	3175	7566

7590  
Striker Striker & Stenby  
103 East Neck Road  
Huntington, NY 11743

06/11/2008

EXAMINER
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LANDRUM, EDWARD F

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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06/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,048	<b>Applicant(s)</b> EBENHOCH, SIEGFRIED	
	<b>Examiner</b> Edward F. Landrum	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 16 objected to because of the following informalities: The last four lines of claim 16 make it sound as if the drive unit is driving both the oscillating blade and the stationary blade. The stationary does not move so this cannot be the case. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abraham et al (International Publication No. WO 02/32314 A1), hereinafter Abraham, in view of Hildebrandt (German Patent No. 3310706 A1).

Abraham teaches (see Figures 1-8) a hair-cutting machine (10) with a handle (20) that has a front end. A cutter head (50) is disposed on the front end of the handle (20). The cutter head has a stationary blade (55) and an oscillating blade (57) disposed above the stationary blade while the hair-cutting machine is disposed in an operating position where the handle (20) is held vertically and the front end of the handle is located below the rest of the handle (20). A cutting plane is formed by the cutting blades (55 and 57) and is capable of being inclined in relation to a longitudinal axis of the handle. In the operating position as described above the cutting plane can be

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inclined downward and to the left of the longitudinal axis of the handle (20). Abraham further teaches that the inclination angle of the cutting plane is adjustable (see Figures 4-8) and therefore is inherently capable of having a positive inclination angle of 30 degrees between the cutting plane and the longitudinal axis of the handle. Furthermore, Figure 3 shows that the cutter head (50) is interchangeable, and Figures 5-8 show that a flat covering (handle portion of handle 20 to the left of reference numeral 57) is provided for the oscillating blade (57).

Abraham teaches all of the elements of the current invention as stated above except the oscillating blade being adjustable in relation to the stationary blade in a longitudinal direction of the cutting plane, and the stationary blade being between the oscillating blade and the handle such that the drive unit must go through the stationary blade to connect to the oscillating blade.

Hildebrandt teaches (see English Abstract and Figure 2) that it is old and well known in the cutting art to provide adjustment means to adjust a moving cutting blade (16) in a longitudinal direction in relation to a cutting plane formed by the moving cutting blade (16) and the non-moving blade (17). The provided computer translation of the patent from the European Patent Office clearly states that the upper blade (16) is the moving blade (see last paragraph on page 1 along with the first paragraph of page 2).

It would have been obvious to have modified Abraham to incorporate the teachings of Hildebrandt to allow the oscillating blade to move in the longitudinal direction of the cutting plane with respect to the stationary blade. Doing so would allow a user to change the cutting height of the device thereby allowing a user to change the

length of hair he or she wanted to remove without having to add on separate device to adjust the cutting height.

It has been held that there would be no invention in the shifting of location of parts if the operation of the device would not thereby be modified. Therefore it would have been an obvious matter of design choice to one of ordinary skill in the art to position the stationary blade between the handle and the oscillating blade such that the drive unit must pass through the stationary blade to drive the oscillating blade, as the device would still perform the operation of cutting hair in the exact same way, as it appears how the device cuts hair depends more upon the angle of the blades in relation of the hair being cut than the position of the blades.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 11-16 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the obvious design choice rejection for claim 16, applicant has outlined multiple scenarios where either the oscillating blade (Figures 8 and 9) or the stationary blade (Figure 13) is positioned closer to the hair during the cutting process. Examiner contends that electric shears with the oscillating blade positioned between the stationary blade and the handle could perform the exact same cuts shown in these scenarios provided the blades could be positioned correctly. Based on Figure 4 of applicant's disclosure and the size and shape of other shears in the art it appears it is indeed possible, therefore the ability to perform these cuts is not dependent on which blade is closer to the handle.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wahl et al (U.S Patent No. 5,970,616), Maloy (U.S Patent No. 2,726,447), Parkin (U.S Patent No. 2,119,792), Yamada et al (U.S Patent No. 3,797,109), Wolf et al (U.S Patent No. 4,930,217), Proffitt (U.S Patent No. 3,217,409), Kubo (U.S Patent No. 5,325,589), Ogawa (U.S Patent No. 5,367,772), Melton (U.S Patent No. 5,579,581), and Lebherz et al (U.S Patent No. 6,260,276) teach elements of the current invention.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. F. L./  
Examiner, Art Unit 3724  
6/6/2008

/Boyer D. Ashley/  
Supervisory Patent Examiner, Art Unit 3724